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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,459	12/08/2003	Mark J. Levine	930009-2010	2911

20999 7590 08/25/2009
FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

EXAMINER

PIZIALI, ANDREW T

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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08/25/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,459	Applicant(s) LEVINE ET AL.	
	Examiner Andrew T. Piziali	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 23-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 1-13, 24, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 25-27 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/14/04 & 3/23/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4/3/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on 7/17/2009 has been entered.

Election/Restrictions

2. The traversal is on the ground that the combination requires the particulars of the subcombination. This is not found persuasive because prior to the current amendment the combination did not require the subcombination requirement that the flat filaments be incorporated into the support fabric during production of the support fabric. After the current amendment applicant's argument is still not persuasive because the combination does not require the subcombination requirement that the hydroentangling support fabric be in a hydroentangling apparatus. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser in view of (to show inherency) WO 01/88261 to Strandqvist.

Gaisser discloses a papermaking machine support fabric comprising flat filaments wherein said support fabric is endless (see entire document including column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50).

Gaisser does not specifically mention using the fabric as claimed, but Strandqvist discloses that a papermaking machine support fabric is capable of being used as a hydroentangling support fabric for the production of a hydroentangled nonwoven product (see entire document including page 1, lines 4-5 and page 4, lines 7-18). Therefore, the fabric of Gaisser is inherently capable of being used as claimed.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a

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product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Claim Rejections - 35 USC § 103

6. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of any one of USPN 4,345,730 to Leuvelink or USPN 5,857,497 to Gaisser.

Greenway discloses an endless support fabric in a hydroentangling apparatus for the production of a hydroentangled nonwoven product (see entire document including column 4, lines 33-46 and Figure 1). Greenway discloses the use of support fabric round filaments (Table I), but Greenway is silent with regards to the use of support fabric flat filaments. Leuvelink and Gaisser each disclose that it is known in the support fabric art to use a support fabric comprising flat filaments (see entire document of Leuvelink including column 4, line 63 through column 5, line 23 and column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50 of Gaisser). Therefore, it would have been obvious to one having ordinary skill in the art at the time the

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invention was made to substitute flat filaments for the round filaments, because the substitution of known equivalent structures involves only ordinary skill in the art. *In re Fout* 213 USPQ 532 (CCPA 1982); *In re Susi* 169 USPQ 423 (CCPA 1971); *In re Siebentritt* 152 USPQ 618 (CCPA 1967); *In re Ruff* 118 USPQ 343 (CCPA 1958). When a patent claims a structure already known in the prior art that is altered by the mere substitution of one element for another known in the field, the combination must do more than yield a predictable result. *KSR v. Teleflex*.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

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7. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 3,493,462 to Bunting in view of USPN 5,840,637 to Denton.

Bunting discloses an endless hydroentangling support fabric in a hydroentangling apparatus for production of a hydroentangled nonwoven product wherein the support fabric is “smooth” (see entire document including column 2, line 9 through column 3, line 21).

Bunting discloses that a mesh supporting fabric may be used (paragraph bridging columns 2 and 3), but Bunting does not appear to mention the use of a support fabric comprising flat filaments. Denton discloses that it is known in the art of support fabrics to use flat filaments to create a woven support fabric comprising a smooth surface (see entire document including column 1, lines 55-63 and column 5, lines 50-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the smooth support fabric of Bunting as taught by Denton, motivated by a desire to form a smooth support fabric and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability and desired characteristics.

Regarding claims 25-27 and 31, it is the examiner’s position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the

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prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

8. Claims 23, 25-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight.

Elsener discloses a fabric comprising flat filaments (see entire document including column 3, lines 40-47). Elsener discloses that the fabric is preferably a roller hand towel (column 3, lines 56-62). Elsener does not appear to specifically disclose that the roller hand towel is in a continuous loop or made endless, but Schwartz and Whight each disclose that it is known in the roller hand towel art to use an endless fabric (see entire documents including column 1, lines 4-23 and column 2, lines 43-45 of Schwartz and column 1, lines 4-45 of Whight). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fabric in any suitable shape, such as an endless fabric, because it is within the general skill of a worker in the art to select a known shape on the basis of its suitability and desired characteristics.

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Elsener does not specifically mention using the fabric as claimed, but it appears that the fabric is capable of being used as claimed. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding claims 25-27 and 31, it is the examiner's position that the article of the applied prior art is identical to or only slightly different than the claimed article. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289 (Fed. Cir. 1983). The applied prior art either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the applied prior art.

Response to Arguments

9. Applicant's arguments filed 4/3/2009 have been fully considered but they are not persuasive.

Regarding claims 23 and 25-27 being rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,857,497 to Gaisser, applicant's arguments have been considered but are moot in view of the new ground of rejection.

Regarding claims 23 and 25-27 being rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,142,752 to Greenway in view of USPN 4,345,730 to Leuvelink, the applicant asserts that since Greenway discloses the use of round filaments there is no motivation to use flat filaments. The examiner respectfully disagrees. Greenway discloses an endless support fabric in a hydroentangling apparatus for the production of a hydroentangled nonwoven product (see entire document including column 4, lines 33-46 and Figure 1). Greenway discloses the use of support fabric round filaments (Table I), but Greenway is silent with regards to the use of support fabric flat filaments. Leuvelink and Gaisser each disclose that it is known in the support fabric art to use a support fabric comprising flat filaments (see entire document of Leuvelink including column 4, line 63 through column 5, line 23 and column 1, lines 11-35, column 4, lines 30-39 and column 6, lines 42-50 of Gaisser). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute flat filaments for the round filaments, because the substitution of known equivalent structures involves only ordinary skill in the art.

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Regarding claims 23 and 25-27 being rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,883,022 to Elsener in view of any one of USPN 3,884,630 to Schwartz or USPN 4,104,814 to Whight, the applicant asserts that one skilled in the art of industrial process belts would not look to hand towels. Applicant's argument is not persuasive because one skilled in the art of industrial process belts is not required for said rejection. Rather, only one skilled in the art of hand towels is required.

The applicant also asserts that one skilled in the art would not be motivated to use a hand towel in a hydroentangling machine. Applicant's argument is not persuasive because a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

10. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T. Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T Piziali/
Primary Examiner, Art Unit 1794